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In the Supreme Court of the United States

OCTOBER TERM, 1990

INTERNATIONAL ORGANIZATON OF MASTERS, MATES & PILOTS, ET AL., PETITIONERS

v.

TIMOTHY A. BROWN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Section 401(c) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 481(c), confers a right on a candidate for union office to have campaign literature distributed by the union. The question presented is whether Section 401(c) conditions that right on the reasonableness of the request for distribution, rather than on the reasonableness of a union rule restricting such requests.

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement	2
Summary of argument	7
Argument:	
A candidate's right under the LMRDA to have campaign literature distributed by the union is conditioned on the reasonableness of the request for distribution, not on the reasonableness of a union rule restricting such requests	10
A. The language and structure of Section 401(c) require courts to focus on the reasonableness of the candidate's request	11
B. The purpose and legislative history of Section 401(c) support the conclusion that the appropriate focus is on the reasonableness of the candidate's request	17
C. The Secretary's construction of Section 401(c) is entitled to deference	24
Conclusion	29

TABLE OF AUTHORITIES

Cases:	
BLE Int'l Reform Comm. v. *Sytsma*, 802 F.2d 180 (6th Cir. 1986)	25
Calhoon v. *Harvey*, 379 U.S. 134 (1964)	24
Chevron U.S.A. Inc. v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)	25, 28
Consumer Product Safety Comm'n v. *GTE Sylvania, Inc.*, 447 U.S. 102 (1980)	13
Donovan v. *Metropolitan District Council of Carpenters*, 797 F.2d 140 (3d Cir. 1986)	9, 27
Donovan v. *National Transient Division, Int'l Bhd. of Boilermakers*, 736 F.2d 618 (10th Cir. 1984), cert. denied, 469 U.S. 1107 (1985)	25

Cases—Continued: Page

Donovan v. *Sailors' Union*, 739 F.2d 1426 (9th Cir. 1984), cert. denied, 471 U.S. 1004 (1985) .. 25
Dunlop v. *Bachowski*, 421 U.S. 560 (1975) 16
Finnegan v. *Leu*, 456 U.S. 431 (1982) 17, 20
INS v. *Cardoza-Fonseca*, 480 U.S. 421 (1987) 13
Local No. 28, Furniture & Piano Moving v. *Crowley*, 467 U.S. 526 (1984) 16, 17, 20, 24
Local 3489, United Steelworkers v. *Usery*, 429 U.S. 305 (1977) 11, 14, 18, 21, 24, 28
Marshall v. *Provision House Workers Union, Local 274*, 623 F.2d 1322 (9th Cir. 1980) 27
Trbovich v. *UMW*, 404 U.S. 528 (1972) 20
United Steelworkers v. *Sadlowski*, 457 U.S. 102 (1982) 14, 21
Wirtz v. *Hotel Employees Union, Local 6*, 391 U.S. 492 (1968) 14, 18, 20, 21, 24
Wirtz v. *Local 153, Glass Bottle Blowers Ass'n*, 389 U.S. 463 (1968) 16, 18, 20, 21, 24
Yablonski v. *UMW*, 71 L.R.R.M. (BNA) 2606 (D.D.C. 1969) 12

Statutes and regulations:

Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. 411 *et seq.*:
Tit. I, 29 U.S.C. 411 *et seq.*:
§ 101(a)(1), 29 U.S.C. 411(a)(1) 7, 12, 14
§ 101(a)(2), 29 U.S.C. 411(a)(2) 7, 12-13, 14
Tit. IV, 29 U.S.C. 481 *et seq.*:
§ 401(c), 29 U.S.C. 481(c) ..... *passim*
§ 401(e), 29 U.S.C. 481(e) 1, 12, 14, 16, 17, 24
§§ 401-403, 29 U.S.C. 481-483 1
§ 402, 29 U.S.C. 482 ..... 1, 16, 17, 27
§ 403, 29 U.S.C. 483 16
29 C.F.R.:
Section 452.67 ..... 9, 15, 26
Section 452.69 26
Section 452.79 11
Sections 452.79-452.80 26
Section 452.80 12

Miscellaneous: Page

105 Cong. Rec. (1959):
pp. 6469-6493 14
p. 6476 16
p. 6693 14
p. 6717 ..... 16, 18
p. 6719 ..... 14, 23
p. 6720 16
p. 6721 23
pp. 6721-6722 23
pp. 6722-6724 23
p. 6723 ..... 16, 23
p. 6724 23
p. 6726 18
p. 6727 14
pp. 6727-6728 24
p. 6728 ..... 16, 18, 19
p. 6729 18
Dep't of Labor, *LMRDA Interpretative Manual* (1971) 26
H.R. Conf. Rep. No. 1147, 86th Cong., 1st Sess. (1959) 22, 24
H.R. Rep. No. 741, 86th Cong., 1st Sess. (1959) 16, 20
Letter of J.L. Holcombe, Commissioner of Labor-Management Relations and Cooperative Programs, to J.W. Brown, General Counsel, Hotel & Restaurant Employees and Bartenders International Union (Apr. 20, 1960) 9, 26
Letter of R. Hunsucker to T. Brown (July 15, 1988) 4
NLRB, *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959* (1959):
Vol. 1 ..... 15, 24
Vol. 2 ..... 14, 16, 18, 23, 24
S. 1555, 86th Cong., 1st Sess. (1959) 15, 24
S. Rep. No. 187, 86th Cong., 1st Sess. (1959) .. 16, 20, 21, 22, 24
Summers, *Democracy in a One-Party State: Perspectives from Landrum-Griffin*, 43 Md. L. Rev. 93 (1984) 19

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INTEREST OF THE UNITED STATES

The Secretary of Labor enforces the provisions of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. 481-483, governing the conduct of union elections. See 29 U.S.C. 482. This case involves interpretation of Section 401(c), 29 U.S.C. 481 (c), which confers a right on a candidate for union office to have the union distribute campaign literature at the candidate's expense. As indicated in our brief filed at the petition stage, the ability of candidates to distribute campaign literature—often the only effective method of communicating with the rank and file union membership—is an essential part of Title IV's mandate of free and open union elections. The standard governing a candidate's distribution right is therefore of central im-

portance to the statutory scheme. Because resolution of the question presented will have a significant effect on the Secretary's administration of Title IV, she has a substantial interest in this case.

STATEMENT

1. Petitioner International Organization of Masters, Mates and Pilots (the Union or IOMMP) is a labor organization representing workers employed in the maritime industry as ship's officers, as pilots, and in other similar positions. J.A. 13, 80. Petitioners Robert J. Lowen and F. Elwood Kyser are officers of the Union. J.A. 12, 80.

The Union conducts quadrennial elections of officers by mail ballot. J.A. 80. Under the Union's nominating process, a member who meets certain eligibility criteria may be nominated at the nominating convention, either by petition or from the floor. IOMMP Const. Art. V, Sec. 5, J.A. 29-30. Ballots containing the names of nominees are mailed to Union members within 30 days after the convention, and members are allowed 90 days from mailing to return their ballots. IOMMP Const. Art. V, Sec. 9(d) and (f), J.A. 38; J.A. 80.

Respondent Timothy A. Brown is a member of the Union who sought the office of president during the Union's 1988 election. J.A. 13, 76, 80. He wished to distribute campaign literature to Union members at his own expense before the August 1988 nominating convention. J.A. 15, 80. As is generally the case, the Union leadership had exclusive access to the membership mailing list, and respondent therefore asked the Union to provide mailing labels containing the names and addresses of voting Union members to a mailing service, so that he could mail literature to Union members at his own expense. J.A. 15, 80. He sought a preconvention mailing of his campaign literature in order to attract support from other members before they were likely to have committed their votes to other candidates or declared their

own candidacy. J.A. 13-14. The desirability of an early mailing is heightened in the context of this Union because most of its members work at sea for long periods of time and mail is the only effective means of communicating with them. J.A. 13. An early mailing would also increase the opportunity of Union members to confer and to discuss—for example, at the nominating convention—the issues raised in the mailing. J.A. 14, 77-78.[1]

On June 7, 1988, petitioner Kyser denied Brown's request for distribution on the ground that the Union constitution did not authorize the distribution of campaign literature until after the nominating convention, at which a ballot committee and "Impartial Balloting Agency" would be designated as responsible for such distribution. J.A. 44-45.[2] Brown appealed this decision to the Union's executive board, which denied the appeal on July 6, 1988. J.A. 48.

2. Brown then filed this action in district court, seeking a preliminary and permanent injunction directing petitioners to comply with Section 401(c) of the LMRDA. J.A. 7-11. Section 401(c) requires unions covered by the Act "to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization." Soon after Brown filed suit, the Director of the Department of Labor's Office of Elec-

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[1] In an affidavit submitted to the district court, Brown also noted that the "officers of the IOMMP control the union's newspaper, which is the principal and only regular source of news which members have about union affairs." J.A. 13; see also IOMMP Const. Art. XI, Sec. 5(b).

[2] The IOMMP Constitution does not specifically address the timing of a candidate's request for literature distribution. However, petitioners interpret several provisions of that constitution as precluding "access to the mailing list for [campaign literature] distribution until after nominations have been made," *i.e.*, after the convention. J.A. 60; see also J.A. 44-45.

tions, Trusteeships and International Union Audits, who had been furnished with copies of Brown's requests and petitioners' denials, informed the Union that the denials were contrary to the requirements of the Act. Letter from R. Hunsucker to R. Lowen (July 15, 1988).[3]

On July 25, 1988, the district court ruled that petitioners had violated Section 401(c) by refusing Brown's preconvention mailing request. J.A. 69-72, 76-78. The court therefore issued a preliminary injunction directing petitioners to deliver a set of mailing labels bearing the names and addresses of all Union members to a mutually acceptable mailing service so that Brown's campaign literature could be distributed. J.A. 74-75.

The district court held that, in determining the lawfulness of a union's refusal to honor a candidate's request to distribute campaign literature, the focus must be on the reasonableness of the request rather than on the reasonableness of the union rule under which the request was denied. J.A. 76-77. The court found this result mandated by the clear language of the statute, which requires a union "to comply with all reasonable requests of any candidate." *Ibid.* (quoting Section 401(c)). In the district court's view, a court could not give effect to a union rule if "its application results in the rejection of a reasonable request made by a candidate." J.A. 77. In this case, since Brown's request "to

[3] Mr. Hunsucker also wrote to respondent informing him that the Department viewed the Union's denial of his request as unlawful. See Letter of R. Hunsucker to T. Brown (July 15, 1988), J.A. 52-54. Mr. Hunsucker's letter stated that candidates for union office must be afforded a reasonable period to campaign and that what constitutes a reasonable period is dependent upon a number of factors "including the method of nomination, the size of the union, and the geographic area in which it operates." J.A. 53. He noted that "[m]aritime unions generally require more time for this purpose than do land-based organizations of limited geographic jurisdiction," and concluded that "[a] request for a mailing to be made approximately one month prior to nominations would appear to be reasonable." J.A. 53-54.

distribute his campaign literature approximately one month before the union's convention is held * * * is clearly reasonable," the court concluded that petitioners had violated the Act by refusing to honor it. *Ibid.*[4]

3. A divided panel of the court of appeals affirmed the preliminary injunction on the ground that Brown's request was a reasonable one. J.A. 79-88.[5] The majority agreed with the district court that Section 401(c) conditions a candidate's distribution right solely on the reasonableness of the request, not on the reasonableness of any union rule. J.A. 81. "[M]aking the issue the reasonableness of the union by-law," the court noted, "stands the statute on its head" by "render[ing] union by-laws superior to the congressional mandate and [by] provid[ing] dissident unions with a ready means for nullifying the statute's command." J.A. 85. In addition, the majority observed that its reading accorded with the construction of the statute adopted by the Secretary of Labor, whose "opinion [is] entitled to consideration by this Court and is not to be lightly disregarded." J.A. 82. The court also found the Secretary's construction to be "in clear accord" with Congress's intent to ensure union democracy by moderating the advantages of incumbents who have "exclusive control of the union membership lists" between elections. J.A. 82-83.

Noting that the Union had made no claim that Brown's request was unreasonable, the majority held that the "manifest result" of denying that request pursuant to the Union's rule would be to favor incumbents. J.A. 83. The court noted that the incumbents had had four years

[4] The court ruled in the alternative that even if the reasonableness of a union's rule governs the LMRDA inquiry, petitioners had violated the Act because the Union rule invoked in this case was unreasonable. J.A. 77-78.

[5] The district court had entered a preliminary injunction, but the court of appeals, after noting that the district court's opinion and order "in effect constituted a decision on the merits," "affirm[ed] the decision * * * as one on the merits." J.A. 80.

to communicate with Union members and "to cultivate their relations with the local union officers who would be expected to have the greatest influence with the rank and file"; it also noted that during this time the incumbents had control of the Union press and its newsletter to the members. *Ibid.* In these circumstances, the court concluded, "[t]he advantages of the union by-law to the incumbent cannot be questioned." *Ibid.*

The majority in turn rejected the Union's argument that the use of its rule was permissible because it was a reasonable method of satisfying the Act's prohibition against discrimination among candidates with respect to campaign literature distribution. J.A. 84. As the court reasoned, granting Brown's request would not constitute discrimination because any other candidate for office could assert the same right. Rather, granting the request would "reduce[] the discrimination of exclusive control by the union incumbents over the electoral lists." *Ibid.*

Judge Hall, in dissent, concluded that any individual request for distribution that conflicts with established union procedures is per se unreasonable unless the union's procedures are shown to be unfair or discriminatory. J.A. 86. He asserted that the majority's approach prevented a request for distribution from being examined within its "underlying factual context." J.A. 87. In addition, he faulted the majority's approach as sanctioning judicial intrusion into internal union affairs, absent an indication that the union had distorted the democratic process. *Ibid.*

The Fourth Circuit granted petitioners' suggestion for rehearing en banc; although the Secretary had not participated at earlier stages of the litigation, she filed a brief as amicus curiae supporting respondent and participated in oral argument before the en banc court. The full court adopted the panel majority's opinion affirming the Secretary's interpretation of Section 401(c). J.A. 90. Judge Hall adhered to his earlier dissent, and Judge Phillips filed a separate dissenting opinion in which he supported Judge Hall's views. J.A. 90-91.[6]

SUMMARY OF ARGUMENT

The court of appeals correctly held that Section 401(c) of the LMRDA conditions the distribution right of candidates for union office on the reasonableness of their requests for distribution, rather than on the reasonableness of any union rule restricting their requests. This approach is dictated by the language, structure, and legislative history of the Act; it best implements the purposes of the statute; and it accords with the interpretation adopted by the Secretary of Labor.

1. The plain terms of Section 401(c) require every union "to comply with all reasonable requests of any candidate to distribute" campaign literature; the Section thereby makes dispositive the reasonableness of a candidate's request. The meaning of the provision is as deliberate as it is clear: when Congress wished to make union members' rights subject to restriction by union rules, it did so explicitly. See, *e.g.*, Section 101(a)(1), 29 U.S.C. 411(a)(1); Section 101(a)(2), 29 U.S.C. 411(a)(2).

There is no support for petitioners' argument that, since rules by their nature limit official discretion, any

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[6] On July 28, 1988, the day it heard oral argument, the panel issued an order denying petitioners' application for a stay of the preliminary injunction; petitioners thereafter complied with Brown's distribution request. The Union subsequently conducted its election and Brown lost the election by a small margin. However, the propriety of that election was successfully challenged by the Secretary on a number of other grounds, and a new election will be held. *Dole* v. *International Organization of Masters*, No. MJG-89-2071 (D. Md.). Brown has already sought to exercise his right to have campaign literature distributed in the new election and may seek to do so in the next regularly scheduled election. Br. in Opp. 7 n.1. We therefore agree with the parties that, because the controversy is capable of repetition yet evading review, this Court has jurisdiction to consider this matter. See *ibid.*

right that is subject to case-by-case review—as is the right provided by Section 401(c)—is also subject to the "lesser restraint" of union rules. First, the argument neglects the role of the court: the alternative to limitation of candidate rights by union rule is *not* the uncontrolled discretion of union officials but a determination of the reasonableness of a request that is subject to judicial review. Second, this Court has already decided that the provisos making rights subject to reasonable union rules were added in order to preserve unions' prerogatives to impose such union rules; where Congress did not include such a proviso, it did not intend the right at issue to be so qualified. Finally, it is highly unlikely that Congress intended to allow union rules to restrict union officials' ability to *grant* reasonable requests. Nor is there any danger that officials will discriminate in granting requests, since such discrimination is expressly prohibited by Section 401(c).

The structure of the statute also supports the court of appeals' reading of Section 401(c). That Section's requirement is the only obligation imposed under Title IV of the LMRDA that is enforceable through private suit as well as through civil action by the Secretary. The dual enforcement mechanism underscores the desire of Congress to limit union prerogatives in favor of the basic right of union members to have campaign literature distributed.

2. This interpretation of Section 401(c) best advances the purpose of the Act to safeguard free and democratic union elections: it promotes maximum communication between insurgent candidates and the union electorate, an essential goal since voters are already familiar with the leadership of incumbents through official channels. In fact, stringent enforcement of the right guaranteed by Section 401(c) will itself minimize the need for governmental interference with internal union affairs, since individual members will then be able to police union processes themselves. Finally, it is unlikely that candidates

will overwhelm their union with distribution requests, since the candidates must bear the costs of the distribution themselves.

Additional legislative history confirms that Congress acted deliberately when it declined to make the distribution right subject to union rules. While Congress repeatedly referred to the unions' duty to grant "all reasonable requests," there is no indication whatever in the legislative materials that a limitation by union-made rules may be appropriate. Further, Congress adopted the key language of Section 401(c) contemporaneously with its addition of provisos making other rights in the LMRDA subject to union rules. Clearly Congress judged such a qualification to be inappropriate in the context of the right to request literature distribution.

3. The Secretary of Labor has consistently interpreted Section 401(c) to require that unions must grant "all reasonable [distribution] requests," whether or not a union has passed reasonable rules that dictate otherwise. Were there any ambiguity in the statutory mandate, the Secretary's interpretation would be entitled to deference.

The Secretary has early and repeatedly confirmed this interpretation by opinion letter (see Letter of J.L. Holcombe, Commissioner of Labor-Management Relations and Cooperative Programs, to J.W. Brown, General Counsel, Hotel & Restaurant Employees and Bartenders International Union (Apr. 20, 1960)), by regulation (see, *e.g.*, 29 C.F.R. 452.67; 29 C.F.R. 452.69), and in litigation positions (see, *e.g.*, *Donovan* v. *Metropolitan District Council of Carpenters*, 797 F.2d 140 (3d Cir. 1986)). These statements are not inconsistent with the Secretary's encouragement of union rules regarding distribution of literature. See 29 C.F.R. 452.67. Indeed, through rules, a union can notify its members as to the mechanics of distribution and can apprise them of administrative constraints facing the union (which may in fact influence whether a request is "reasonable"). An

acknowledgement that rules offer these advantages has not altered the Secretary's recognition that a court applying Section 401(c) must look to the reasonableness of a candidate's request rather than the reasonableness of a union rule.

ARGUMENT

A CANDIDATE'S RIGHT UNDER THE LMRDA TO HAVE CAMPAIGN LITERATURE DISTRIBUTED BY THE UNION IS CONDITIONED ON THE REASONABLENESS OF THE REQUEST FOR DISTRIBUTION, NOT ON THE REASONABLENESS OF A UNION RULE RESTRICTING SUCH REQUESTS

Section 401(c) of the LMRDA provides that a labor organization has a duty to comply with "all reasonable requests" by candidates for union office to distribute their campaign literature to all members of the union in good standing. The court of appeals correctly held that in determining whether a union's refusal to comply with a candidate's request offends this provision, a court should assess the reasonableness of the candidate's request, rather than the reasonableness of the union rule under which the request was denied. J.A. 81, 84.

Under this interpretation, a reviewing court must determine whether there has been a violation of the distribution requirement by evaluating all the facts and circumstances attendant to the request (and its denial), rather than by giving deference to union rulemaking. Thus, the reasonableness of a candidate's request will be judged in light of such factors as the geographic distribution of the union, the size of the union membership, the type of election held by the union (direct referendum or delegate), and the timing of the candidate's request. Indeed, a reviewing court's attention to the factual context of a request naturally includes its consideration of existing union rules as evidence of administrative constraints and concerns faced by the union.[7] Cf. 29 C.F.R. 452.79; *Local 3489, United Steelworkers* v. *Usery*, 429 U.S. 305, 313 (1977).[8] There is no warrant in the statute, however, to elevate a union rule beyond this evidentiary function and give it dispositive weight.

This approach adheres to the language and legislative history of the provision, best implements the purposes of the statute, and accords with the interpretation of the Secretary of Labor, who is charged with the enforcement of Title IV.

A. The Language and Structure of Section 401(c) Require Courts to Focus On The Reasonableness Of The Candidate's Request

1. The court of appeals' conclusion is directed by the text of Section 401(c). That Section provides in relevant part (emphasis added):

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[7] For example, before computerized record-keeping, unions commonly kept the names and addresses of members on ledger cards. The cards were pulled and used in order to mail out ballots. A union rule prohibiting the mailing of campaign literature during the week the cards were being used to mail election ballots would accurately reflect administrative constraints faced by the union and so provide strong evidence that a candidate's demand for a mailing at that time was unreasonable.

[8] Thus, petitioners and amicus AFL-CIO repeatedly overstate the matter—and misstate the position of the United States (see U.S. Br. at petition stage 15 n.8)—when they contend that the approach adopted by the Fourth Circuit requires a court to "ignore" union rules (AFL-CIO Br. 5) and decide cases "without reference" (*id.* at 7) to them. See, *e.g.*, Pet. Br. i, 9, 12, 15, 24; AFL-CIO Br. 9-10, 16.

Likewise, no purpose is served by amicus's reformulation of the issue as "whether—given the factual context of preexisting and reasonable union rules—a candidate's request is 'reasonable' when the request fails to conform to the rules' requirements." AFL-CIO Br. 10, 15. This reformulation still requires assessment of the "reasonableness" of a union's rules—whether by assuming that they are reasonable (as petitioners and their amicus evidently do in this case) or by concluding that they are reasonable after a fact-specific evaluation. The question remains whether that assessment should prevail over an evaluation of the reasonableness of a request.

> Every national or international labor organization, * * * and every local labor organization, and its officers, *shall be under a duty*, enforceable at the suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office, *to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy* to all members in good standing of such labor organization * * *.

Section 401(c) thus imposes an obligation on unions to distribute campaign literature at a candidate's expense in response to "all reasonable requests of any candidate."[9] The meaning of the provision is clear: it "conditions the right of the contesting union office seeker to have his campaign material distributed only on the *reasonableness of his request.*" J.A. 81 (emphasis added).

Congress's choice of language was deliberate. When Congress wanted the courts to focus instead on the reasonableness of union rules, it said so explicitly. Elsewhere in the LMRDA, Congress identified the specific circumstances in which it intended reasonable union rules to qualify a union member's rights. See, *e.g.*, Section 401(e), 29 U.S.C. 481(e) ("every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed)"); Section 101(a)(1), 29 U.S.C. 411(a)(1) (providing union members with equal rights and privileges to nominate candidates, to vote in elections or referendums, to attend union meetings and to participate in deliberations and voting at such meetings, "subject to reasonable rules and regulations in [a labor organization's] constitution and bylaws"); Section 101(a)(2), 29 U.S.C. 411(a)(2) (providing union members with rights to free speech and assembly "subject to the organization's established and reasonable rules pertaining to the conduct of meetings"). The difference in language between these provisions and Section 401(c) is hardly a "subtle" one (AFL-CIO Br. 18): each of the other provisions subjects an individual's right to limitation by "reasonable rules" or "qualifications"; Section 401(c) does not. "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 432 (1987); see also *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 109 (1980). That proposition is fully applicable here.

[9] A union member need not be formally nominated in order to be a bona fide candidate entitled to exercise Section 401(c) rights. 29 C.F.R. 452.80; see *Yablonski* v. *UMW*, 71 L.R.R.M. (BNA) 2606 (D.D.C. 1969).

Nor can the import of the language difference be inverted, as petitioners (Br. 11, 16) and their amicus (AFL-CIO Br. 6, 16-17) seek to do, by asserting that the right in Section 401(c) is *less expansive* than those rights explicitly made subject to reasonable union rules. Under their argument, since a rule by its nature limits discretion, any right that is subject to case-by-case review—as is the right to distribution under Section 401(c)—may also be subject to what they view as the lesser restraint of union rules. Pet. Br. 11-12, 16; AFL-CIO Br. 16-17, 20. Thus, they contend that a union may respond to distribution requests *either* by ad hoc decision-making or by applying union rules.

This argument should be rejected for three reasons. First, under Section 401(c), the alternative to limitation of candidate rights by union rule is *not* the uncontrolled discretion of union officials. Rather, the statute expressly provides that a union's rejection of a request is subject to judicial review in order to determine whether the request was reasonable and should have been granted. Thus the statute requires the court to review *de novo* the final conclusion reached by a union; it does not allow a court to

defer to the union by examining only the rules it used to reach that conclusion.

Second, this Court has already determined that those provisions making rights of union members subject to union rules carry their natural meaning: Congress added that qualification in order to "preserve[] the union's right to adopt reasonable rules." *United Steelworkers* v. *Sadlowski*, 457 U.S. 102, 110 (1982). It attached the qualification to statements that, as originally proposed, appeared to bestow rights on union members more expansively than Congress wished and left unions themselves vulnerable to harassment. *Id.* at 110-111.[10] By contrast, where Congress did not provide that rights would be limited by union rules, those rights are properly read as carrying more expansive protection for union members.[11]

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[10] The predecessors of Section 101(a)(1), 29 U.S.C. 411(a)(1) (pertaining to equal rights), and Section 101(a)(2), 29 U.S.C. 411(a)(2) (pertaining to free speech and association) were added to the LMRDA on the floor by Senator McClellan as part of a "Bill of Rights" for union members. See 105 Cong. Rec. 6469-6493 (1959), *reprinted in* 2 NLRB, *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959*, at 1096-1119 (1959) [hereinafter *Leg. Hist.*]. Three days later, the Senate adopted substitute language for the McClellan amendment, including for the first time the proviso that subjected the new rights in Sections 101(a)(1) and (2) to "reasonable rules" imposed by a union. See 105 Cong. Rec. 6693 (1959), 2 *Leg. Hist.* 1220; 105 Cong. 6727 (1959), 2 *Leg. Hist.* 1239. The purpose of the proviso was "to remove 'the extremes raised by the [McClellan] amendment'" and to moderate language that was "too broad" by allowing "reasonable restraints." *Sadlowski*, 457 U.S. at 110; 105 Cong. Rec. 6719 (1959), 2 *Leg. Hist.* 1231 (statement of Sen. Kuchel (sponsor)). See note 21, *infra*.

[11] It is thus inappropriate for petitioners and amicus to enlist case law identifying the deference due unions under provisions directing judicial attention to union rules (*e.g.*, Sections 101(a)(1) and (a)(2), 401(e)) to support conclusions concerning the text of Section 401(c). See, *e.g.*, Pet. Br. 17 n.4 (citing *Local 3489*, 429 U.S. at 312-313; *Sadlowski*, 457 U.S. at 117); AFL-CIO Br. 10-11, 17-18 (citing *Wirtz* v. *Hotel Employees Union, Local 6*, 391 U.S. 492, 496 (1968); *Sadlowski*, 457 U.S. at 111-112, 117).

Third, it makes no sense to believe, as petitioners' argument assumes, that Congress would view favorably efforts to adopt rules limiting the ability of union officials to *grant* a candidate's reasonable requests. Nor can a union grant only some reasonable requests. To the contrary, Section 401(c) provides that unions must respond to "all reasonable requests" and also contains a provision explicitly prohibiting discrimination regarding requests. See also 29 C.F.R. 452.67. Indeed, the prohibition against discrimination even protects a union member from favoritism that takes the form of selectively granting *unreasonable* requests. As the court of appeals stated, "[t]here is no conceivable way in which the granting of [respondent's] request will work a discrimination against any other union member" because "any candidate, whether an incumbent or an insurgent, has the same rights as the [respondent]." J.A. 84.[12]

2. The structure of the statute likewise supports the court of appeals' reading of Section 401(c). Section 401(c)'s requirement is the only obligation imposed under Title IV that is enforceable by private suit as well as through actions brought by the Secretary.[13] Thus, can-

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[12] The nature of the right at issue—a right to publicity—also negates any significant danger that members will have difficulty monitoring a union's action in granting requests and minimizes the danger that a union will act inconsistently. See AFL-CIO Br. 8. Of course, if a union is truly concerned that a necessary departure from a union rule to accommodate a reasonable request would discriminate against other candidates who are unaware of their rights under the statute, the union can publicize the granting of the request.

[13] The insertion of a private right of action to enforce the distribution right came as part of the compromise struck to amend the McClellan Bill of Rights. See note 10, *supra*. The version of the LMRDA reported out of conference had provided that a union was required to comply with "all reasonable requests" for distribution and had prohibited discriminatory treatment of candidates; enforcement was left to the Secretary. S. 1555, 86th Cong., 1st Sess. § 301(b) (1959), 1 *Leg. Hist.* 372. The McClellan Bill of Rights gave individual members the additional right of inspecting

didates seeking to bring a private action need not exhaust internal union remedies, or await the completion of the election (or the failure to hold an election within the statutorily prescribed time), before seeking relief. Compare 29 U.S.C. 482, 483; see *Local No. 82, Furniture & Piano Moving* v. *Crowley*, 467 U.S. 526, 539-540 & n.15 (1984); *Dunlop* v. *Bachowski*, 421 U.S. 560, 566-567 (1975). The other obligations imposed by Title IV, which the Secretary of Labor enforces by civil action, are subject to such requirements in order to assure unions a "maximum amount of independence and self-government" by giving them every opportunity to correct their errors. S. Rep. No. 187, 86th Cong., 1st Sess. 21 (1959); *Wirtz* v. *Local 153, Glass Bottle Blowers Ass'n*, 389 U.S. 463, 472-473 (1968). By contrast, Section 401(c), in its dual enforcement mechanism as in its terms, sharply limits union prerogatives in favor of the rights of individual union members.

A structural argument advanced by amicus (AFL-CIO Br. 13, 23)—that the holding below is inconsistent with the requirement of Section 401(e) that unions conduct elections in accordance with their constitutions and

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and copying the membership list but did not change enforcement by the Secretary. Secs. 101(a)(7) and 103, 105 Cong. Rec. 6476 (1959), 2 *Leg. Hist.* 1102. Senators concerned that dissemination of a union's membership list could be abused succeeded in removing the inspection and copying right. See, *e.g.*, 105 Cong. Rec. 6717 (1959), 2 *Leg. Hist.* 1230 (statement of Sen. Kuchel); *id.* at 6728, 2 *Leg. Hist.* 1240 (statement of Sen. Javits); see also H.R. Rep. No. 741, 86th Cong., 1st Sess. 86 (1959). In return, they offered language providing that an individual member "may go into the Federal court and may have his rights [not to be discriminated against] under the language of the bill adjudicated." 105 Cong. Rec. 6717 (1959); 2 *Leg. Hist.* 1230 (statement of Senator Kuchel, explaining provision to be introduced by Senator Javits). See also 105 Cong. Rec. 6720 (1959), 2 *Leg. Hist.* 1232 (statement of Sen. Kuchel) (explaining that private right of action was added to enforce other Bill of Rights provisions because it was "in the interest of justice"); 105 Cong. Rec. 6723 (1959), 2 *Leg. Hist.* 1235 (statement of Sen. Curtis) (similar).

bylaws—is without merit. Section 401(e) stipulates that unions are to follow constitutional provisions or bylaws only "insofar as they are not inconsistent with the provisions of this title." Thus Section 401(e) demonstrates Congress's intention that rules embodied in union constitutions and bylaws, like other union rules, are limited by the basic standards that Congress deemed critical to union democracy. Those standards include the right established in Section 401(c).[14]

B. The Purpose and Legislative History of Section 401(c) Support The Conclusion That The Appropriate Focus Is On The Reasonableness Of The Candidate's Request

1. The court of appeals' straightforward reading of the statute best implements the provision's purpose. "The LMRDA was 'the product of congressional concern with widespread abuses of power by union leadership.'" *Crowley*, 467 U.S. at 536 (quoting *Finnegan* v. *Leu*, 456 U.S. 431, 435 (1982)). Specifically, "abuses [that] surfaced [during] the extensive congressional inquiry [pre-

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[14] Petitioners' amicus contends (AFL-CIO Br. 22-23) that the fit between Sections 401(c) and 401(e) nevertheless puts a union in "an intolerable legal position": A union that denies a candidate's distribution request may be sued under Section 401(c); a union that grants the request may be sued under Section 401(e) on behalf of another candidate who points to a contrary union constitutional provision or bylaw, contends that the distribution request was unreasonable, and asserts that the union deviated from the provision or bylaw without justification.

The hypothetical is an imagined dilemma, not a real world one. Only the Secretary can act against a Section 401(e) violation—by exercising her authority under Section 402 of the Act, 29 U.S.C. 482, to overturn the election. It is highly unlikely that the Secretary would conclude that an action to overturn an election should be brought because a request voluntarily granted by the union violated a constitutional provision and was unreasonable and the grant may have affected the outcome. In any case, as we have noted (see note 12, *supra*), a union can lessen the possibility that any candidate would protest discriminatory treatment by publicizing the decision to honor a distribution request.

ceding enactment of the statute] show[ed] how incumbents' use of their inherent advantage over potential rank and file challengers established and perpetuated dynastic control of some unions." *Glass Bottle Blowers Ass'n*, 389 U.S. at 474. Faced with revelations of union corruption, dictatorial practices, and racketeering, Congress determined "to protect the rights of rank-and-file members to participate fully in the operation of their union through processes of democratic self-government, and, through the election process, to keep the union leadership responsive to the membership." *Wirtz* v. *Hotel Employees Union, Local 6*, 391 U.S. 492, 497 (1968). It designed Title IV with the basic objective of "guarantee-[ing] 'free and democratic' union elections modeled on 'political elections in this country.'" *Local 3489*, 429 U.S. at 309 (quoting *Hotel Employees*, 391 U.S. at 504); see also *Glass Bottle Blowers Ass'n*, 389 U.S. at 470; *id.* at 475 (Act designed to protect "vital public interest" in free and democratic union elections).

The ability of a candidate to communicate with union members through distribution of campaign literature is central to a free and democratic election process. Only if a candidate can speak to the rank and file effectively will union members be able to make the informed choice that Congress viewed as critical to union democracy. It is therefore not surprising that the provision enacted as Section 401(c) came to the floor as part of the package designed as a "Bill of Rights" for union members.[15] Congress's emphasis in Section 401(c) was to provide safeguards that could not be moderated or evaded by those in positions of power in the union.

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[15] The package was suggested by Senators Kuchel and Javits as an alternative to Senator McClellan's "Bill of Rights." See 105 Cong. Rec. 6717 (1959), 2 *Leg. Hist.* 1229-1230 (statement of Sen. Kuchel); 105 Cong. Rec. 6726 (1959), 2 *Leg. Hist.* 1238 (statement of Sen. Javits); 105 Cong. Rec. 6728 (1959), 2 *Leg. Hist.* 1240 (statement of Sen. Javits); 105 Cong. Rec. 6729 (1959), 2 *Leg. Hist.* 1242 (statement of Sen. Clark).

Moreover, in enacting Section 401(c), Congress specifically recognized that challengers were at a severe disadvantage vis-a-vis incumbents who had long had access to union membership lists and had for years been able to communicate with union members on a regular basis through official union channels.[16] See generally Summers, *Democracy in a One-Party State: Perspectives from Landrum-Griffin*, 43 Md. L. Rev. 93, 97-98 (1984) (a major "source and instrument of oligarchic control [in unions] is domination of the channels of communication" by incumbents); *id.* at 105, 117-118. Giving full effect to Section 401(c)'s broad mandate requiring unions to honor "all reasonable requests" implements Congress's purpose by promoting maximum communication between all candidates and the union electorate.

By contrast, the standard advocated by petitioners—allowing denials of distribution requests on the basis of "reasonable" union rules—meets none of these congressional concerns. The proposed standard by its very terms defers to existing union rules. These rules are not written on a blank slate; they are instead restrictions on the use of union channels of communication in a context where incumbents have generally enjoyed control of those channels. See, *e.g.*, Summers, *supra*, at 108-109, 113. Moreover, rules may be found reasonable if they further legitimate union interests while serving the needs of most candidates—despite the fact that the needs of the remaining candidates may go unmet, or that a better rule could easily be devised. Thus, to focus on the reasonableness of rules rather than of requests is not so much to reduce incumbents' control (see Pet. Br. 8, 15, 16; AFL-

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[16] See, *e.g.*, colloquy between Senators McClellan and Javits, 105 Cong. Rec. 6728 (1959), 2 *Leg. Hist.* 1240 (Senator McClellan voices concern about power of "incumbent officers" who are "able to perpetuate themselves in office" by use of membership lists; Senator Javits assures him that amendment containing the langage substantially enacted as Section 401(c) will be effective because of amendment's clause prohibiting discrimination in access to lists).

CIO Br. 12, 20-21) as to constrict the initiative Congress intended to guarantee all insurgent candidates.

Nor can Congress's care to avoid unnecessary intrusion into union affairs be employed to revise the purpose of the LMRDA. See Pet. Br. 14-16; AFL-CIO Br. 17-18. Congress clearly recognized that "[a] strong independent labor movement is a vital part of American institutions." S. Rep. No. 187, *supra*, at 5. But the LMRDA was not enacted to protect union autonomy. The statute was passed to implement Congress's determination that "effective measures to stamp out crime and corruption and guarantee internal union democracy, cannot be applied to all unions without the coercive powers of government." S. Rep. No. 187, *supra*, at 6; H.R. Rep. No. 741, 86th Cong., 1st Sess. 6 (1959).[17]

In fact, Congress determined that establishing certain critical protections for individual union members would itself minimize governmental interference in union affairs. "Given the maintenance of minimum democratic safeguards and detailed essential information about the union, the individual members are fully competent to regulate union affairs." S. Rep. No. 187, *supra*, at 7; see also *id.* at 19-21; H.R. Rep. No. 741, *supra*, at 15-16. While this theme is reflected in Title I, the "Bill of Rights" for union members, "Title IV, and particularly § 401, was the vehicle by which Congress expressed its policy." *Hotel Employees*, 391 U.S. at 497-498. As this Court put it,

[17] See also S. Rep. No. 187, *supra*, at 20; *Trbovich* v. *UMW*, 404 U.S. 528, 530-531 (1972) ("The LMRDA was the first major attempt of Congress to regulate the internal affairs of labor unions. Having conferred substantial power on labor organizations, Congress began to be concerned about the danger that union leaders would abuse that power, to the detriment of the rank-and-file members.") (footnote omitted); *Finnegan*, 456 U.S. at 441 ("[T]he Act's overriding objective was to ensure that unions would be democratically governed, and responsive to the will of the union membership as expressed in open, periodic elections."); *Crowley*, 467 U.S. at 536; *Hotel Employees*, 391 U.S. at 497; *Glass Bottle Blowers Ass'n*, 389 U.S. at 469-470.

> Congress did not saddle the courts with the duty to search out and remove improperly entrenched union leaderships[.] Rather, Congress chose to guarantee union democracy by regulating not the results of a union's electoral procedure but the procedure itself. Congress decided that if the elections are "free and democratic," the members themselves are able to correct abuse of power by entrenched leadership.

Local 3489, 429 U.S. at 311-312. In short, it was Congress's judgment that the federal interest in avoiding undue intervention into internal union matters is furthered by stringent enforcement of such basic membership rights as the right to distribute campaign literature. See also *Glass Bottle Blowers Ass'n*, 389 U.S. at 471 ("[T]he freedom allowed unions to run their own elections was reserved for those elections which conform to the democratic principles written into § 401."); accord *Hotel Employees*, 391 U.S. at 496-497.[18]

There is no support for petitioners' speculation (see Pet. Br. 24) that the safeguard dictated by Section 401 (c) places an unreasonable burden on unions. Under Section 401(c), a candidate bears the costs of each requested distribution. Unions are thus freed from any monetary burden, and it is unlikely that candidates bearing the expenses of preparing and mailing campaign literature will make requests "continuously" or "at any time during the four year period between elections" (Pet.

[18] As petitioners' amicus points out (AFL-CIO Br. 10 n.5), Congress's desire to avoid unnecessary intervention into union affairs stimulated it to impose "only essential standards" and "minimum democratic safeguards" in the Act. S. Rep. No. 187, *supra*, at 7; see *Sadlowski*, 457 U.S. at 117. The protections that appear in the LMRDA thus represent the least that is necessary, in Congress's view, to attain the objectives of the Act; they should not be recalibrated. "The legislative history shows that Congress weighed how best to legislate against revealed abuses in union elections without departing needlessly from its long-standing policy against unnecessary governmental intrusion into internal union affairs." *Glass Bottle Blowers Ass'n*, 389 U.S. at 470-471; accord *Hotel Employees*, 391 U.S. at 496-497.

Br. 24). (In any case, a union must grant only such requests as are reasonable.) Nor does the administrative machinery required to deal with candidates' requests appear overwhelming. Indeed, in this case, only two changes seem necessary. The Union would need to designate a mailing service before the convention—which it has already done to distribute other literature. See J.A. 61. And the Union may wish to verify a candidate's eligibility before authorizing the mailing. But verifying length of membership, good standing, and certain service requirements (see IOMMP Const. Art. V, Sec. 4, J.A. 26-29) scarcely seems inordinately burdensome.[19]

2. Additional legislative history confirms the court of appeals' interpretation of Section 401(c). In its explanations of that Section, Congress repeatedly referred to the duty of unions to comply with the "reasonable requests" of candidates. See S. Rep. No. 187, *supra*, at 46 ("Local unions and their officers are forbidden to discriminate in favor of or against any candidate for union office with respect to the use of the union's list of members in good standing and are required to comply with *all reasonable requests of any candidate* for distribution of his campaign literature by the unions, but at the candidate's expense, to members in good standing on the union's roster of members.") (emphasis added)[20]; H.R. Conf. Rep. No. 1147, 86th Cong., 1st Sess. 33 (1959) ("Subsection (b) of section 401 of the Senate bill [adopted by the Conference Committee] contains a provision making it the duty of each union and its officers to comply with *reasonable requests of candidates* to distribute, at the candidates'

[19] Though petitioners and their amicus emphasize that the value of a rule includes the assurance of both clarity and notification (Pet. Br. 23-24, 26-27, AFL-CIO Br. 7, 9, 12), no such rule exists in this case. The "rule" petitioners rely on here is only an interpretation of ambiguous provisions of the Union's constitution. See note 2, *supra*.

[20] S. Rep. No. 187, *supra*, at 46 reviewed language requiring unions to comply with "all reasonable [distribution] requests" similar to that ultimately adopted. See note 13, *supra*.

expense, campaign literature to all members of the union.") (emphasis added).

Neither in these explanations nor in comments during the floor debates was reference ever made to a union prerogative to limit requests according to union rules. Yet, Congress was fully aware of the possibility of such a limitation. As noted above (p. 18 & note 15), the language substantially enacted as Section 401(c) came to the floor as part of a "Bill of Rights" for union members. The initial version of the Bill of Rights, sponsored by Senator McClellan, was modified by an amendment offered by Senator Kuchel. See p. 14 & note 10, *supra*. The Kuchel amendment qualified certain rights provided under the McClellan version by, *inter alia*, expressly permitting unions to adopt reasonable rules—an alteration extensively discussed on the floor.[21] The Javits amendment creating Section 401(c) was drafted in conjunction with the Kuchel amendment and was offered on the floor immediately after the latter's passage. See note 15, *supra*. Although the Kuchel amendment to Title I expressly referred to reasonable union rules and procedures, the Javits amendment did not. Given this context, there is little question that this omission in the Javits amendment was deliberate.[22]

[21] See, *e.g.*, 105 Cong. Rec. 6719 (1959), 2 *Leg. Hist.* 1231-1232 (statements of Sen. Kuchel); 105 Cong. Rec. 6721 (1959), 2 *Leg. Hist.* 1233 (statement of Sen. Church); 105 Cong. Rec. 6721-6722 (1959), 2 *Leg. Hist.* 1234 (statement of Sen. Lausche); 105 Cong. Rec. 6722-6724 (1959), 2 *Leg. Hist.* 1235-1236 (statements of Sen. Goldwater); 105 Cong. Rec. 6723 (1959), 2 *Leg. Hist.* 1236 (statement of Sen. Allott); 105 Cong. Rec. 6724 (1959), 2 *Leg. Hist.* 1236 (statement of Sen. Clark) (all debating whether McClellan Bill of Rights had been unduly weakened or appropriately moderated).

[22] Indeed, as explained above (see note 13, *supra*), the Javits amendment was apparently motivated by a concern about a provision in the McClellan Bill of Rights granting candidates the right to inspect and copy membership lists. (In return for the deletion of that right, the Javits amendment added a private en-

Finally, this Court has rejected giving a "broad reach" even to those provisions of Title IV, such as Section 401(e), that explicitly cede authority to union rulemaking. *Local 3489*, 429 U.S. at 309; *Hotel Employees*, 391 U.S. at 499. *A fortiori*, it is not proper to stretch the language of Section 401(c) to imply such authority.

C. The Secretary's Construction Of Section 401(c) Is Entitled To Deference

The Secretary of Labor has authority to enforce the provisions of Title IV (*Crowley*, 467 U.S. at 539 n.14), including Section 401(c). As the court below noted (J.A. 82), she and her predecessors have consistently interpreted the statute as requiring unions to comply with all reasonable requests for distribution. Indeed, in this case, the Director of the Office of Elections, Trusteeships and International Union Audits of the Department of Labor advised petitioners by letter that the Union's denial of respondent's request appeared to be unlawful. See pp. 3-4 & note 3, *supra*; J.A. 52-54.

This Court has consistently recognized the "special knowledge and discretion" of the Secretary in the administration of Title IV. *Calhoon* v. *Harvey*, 379 U.S. 134, 140 (1964); see *Local 3489*, 429 U.S. at 313; *Glass Bottle Blowers Ass'n*, 389 U.S. at 473; see also S. Rep. No. 187, *supra*, at 34 (noting that the LMRDA "endows the Secretary of Labor with broad power to insure ef-

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forcement remedy to the right to request distribution (*ibid.*) and enhanced the existing prohibition against discrimination in union distributions of literature. Compare S. 1555, 86th Cong., 1st Sess. § 301(b) (1959), 1 *Leg. Hist.* 372, with Javits amendment, 105 Cong. Rec. 6727-6728 (1959), 2 *Leg. Hist.* 1240.) Thus, the amendment was fashioned only to protect against the dangers of *disclosure* of membership lists; it was not intended otherwise to restrict the rights of union candidates to obtain the unlimited use of such lists. (At conference, a House provision granting candidates the right to inspect a membership list once within 30 days of the election was added to Section 401(c). H.R. Conf. Rep. No. 1147, *supra*, at 34.)

fectuation of its objectives"). The court of appeals was therefore correct in concluding that the Secretary's view is entitled to deference. See, *e.g.*, *Donovan* v. *National Transient Division, Int'l Bhd. of Boilermakers*, 736 F.2d 618, 621 (10th Cir. 1984) (deference is owed to Secretary's LMRDA interpretation "unless there are compelling indications that it is wrong"), cert. denied, 469 U.S. 1107 (1985); accord *BLE Int'l Reform Comm.* v. *Sytsma*, 802 F.2d 180, 188 (6th Cir. 1986); see also *e.g.*, *Donovan* v. *Sailors' Union*, 739 F.2d 1426, 1429 (9th Cir. 1984), cert. denied, 471 U.S. 1004 (1985). While we believe the language of the LMRDA is dispositive, the Secretary's interpretation is, at the very least, "based on a permissible construction of the statute" and should be given effect. *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984).[23]

Petitioners and their amicus do not dispute that the Secretary's interpretation of an ambiguous LMRDA statutory provision is entitled to deference. Their more limited contention (Pet. Br. 20-22; AFL-CIO Br. 23 n.12)—that the Secretary has not spoken clearly to the question presented by this case—is mistaken.

Shortly after the LMRDA was enacted, in an opinion letter dated April 20, 1960, the Department took the position that a local union could not enforce a rule refusing all distributions of campaign literature, even if the rule was not discriminatorily applied. In explaining that position, the Department stated:

> Section 401(c) imposes a duty upon labor organizations and their officers to comply with all reasonable

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[23] Petitioners and their amicus do not argue that their interpretation of the statute is mandated by its plain language. See Pet. Br. 12 ("'plain' language of the statute does not compel either interpretation"); AFL-CIO Br. 8. Their argument is based almost entirely on their view that the LMRDA's "purpose" of promoting union self-governance and issuance of mandatory election rules supports the standard they propose.

> requests of any candidate to distribute at the candidate's expense his campaign literature to all members of the union in good standing. For the union to deny *any* such request would clearly violate this duty, *regardless of whether all candidates are treated alike in this respect.*[24]

Thus, the Secretary's early interpretation of Section 401(c) was that a union could not deny "any" reasonable request, even if the denial was pursuant to a uniformly imposed policy or practice.

Regulations later promulgated under the Act made clear that a union must comply with "all reasonable requests of any candidate to distribute campaign literature to the membership at his expense." 29 C.F.R. 452.67; see also 29 C.F.R. 452.69 ("a union and its officers must honor a candidate's request for distribution where the candidate is willing and able to bear the expense of such distribution"; "labor organizations have an *affirmative duty* to comply with all reasonable [distribution] requests") (emphasis added); 29 C.F.R. 452.79-452.80.[25]

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[24] Letter of J. L. Holcombe, Commissioner of Labor-Management Relations and Cooperative Programs, to J. W. Brown, General Counsel, Hotel & Restaurant Employees and Bartenders International Union (Apr. 20, 1960) (emphasis supplied). This position was later incorporated into the Department's *LMRDA Interpretative Manual* (1971), a handbook of official interpretations which guides Department personnel in administering the Act and which is available to the public. See Section 431.007. Both of these documents were appended to the Secretary's amicus brief filed with the court of appeals in this case; copies have been lodged with the Court.

[25] Petitioners argue (Pet. Br. 21 & n.5) that Section 452.69 is not instructive because it stipulates that a union rule denying *all* reasonable requests violates the Act, a proposition that petitioners do not dispute because such a rule is patently unreasonable. But the Secretary's rationale for her conclusion is, as the 1960 opinion letter illustrates, pp. 25-26, *supra*, that a union policy denying *any* reasonable request is invalid, even if uniformly applied.

Finally, pursuant to authority conferred by Section 402, 29 U.S.C. 482, the Secretary has filed enforcement actions asserting that a union's denial of a reasonable request, even if based on a reasonable union rule, is unlawful. See *Donovan* v. *Metropolitan District Council of Carpenters*, 797 F.2d 140 (3d Cir. 1986); see also *Marshall* v. *Provision House Workers Union, Local 274*, 623 F.2d 1322 (9th Cir. 1980) (denial of distribution request violated the Act because the union unreasonably applied its distribution rule; the reasonableness of the rule itself was not challenged); *Marshall* Gov't C.A. Br. 15-16, 26 n.18, 27.

Petitioners and their amicus nevertheless argue (Pet. Br. 21; AFL-CIO Br. 3, 7, 23 n.12)) that the Secretary's position is inconsistent with a portion of one of her regulations, 29 C.F.R. 452.67, stating that "[i]n order to avoid charges of disparity of treatment among candidates, it is advised that a union inform all candidates in advance of the conditions under which distribution will be made and promptly advise them of any change in those conditions." The Secretary envisioned, and continues to maintain, that unions should notify their members as to numerous technical aspects of distribution, *e.g.*, requirements that the requests be sent by certified mail or that payment be tendered in advance. See Gov't C.A. Br. 14. Further, insofar as union rules express administrative and other constraints on the union, they can indicate to members the circumstances under which a request will be found "reasonable." See pp. 10-11, *supra*. The Secretary's encouragement of such notification is not inconsistent with her recognition that when a civil action is brought under Section 401(c), the court must look to the reasonableness of a candidate's request rather than the reasonableness of a union rule.[26]

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[26] The district court accurately observed that unions may draft enforceable rules, so long as they are of sufficient breadth that they will not result in the denial of a candidate's reasonable request. J.A. 77. Although petitioners and their amicus assert (Pet.

In short, the Secretary has reasonably and consistently interpreted Section 401(c) to command that unions comply with "all reasonable requests" for distribution of campaign literature, whether or not the union also has rules that guide those requests. Even if this conclusion were not mandated by the plain terms of the statute, the Secretary's interpretation comports with the purpose of Section 401(c)—to promote union democracy by providing candidates with an individual right to communicate with the union electorate—and is therefore entitled to deference. *Chevron*, 467 U.S. at 843.

Br. 25; AFL-CIO Br. 23) that this approach injects too much uncertainty into the electoral regime, the existence of any such uncertainty is the necessary byproduct of the LMRDA's mandate for democratic elections. This Court rejected virtually the same objection concerning the standard for "reasonable qualifications" for candidates under Section 401(e), noting that the standard it endorsed "leads to more uncertainty than would a less flexible rule * * * [b]ut [that] in using the word 'reasonable,' Congress clearly contemplated exactly such a flexible result." *Local 3489*, 429 U.S. at 312, 313.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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